IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.184 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
SANDEEP CONSTRUCTION PVT. LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 11/10/2005
ORAL ORDER
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(1) of the Income-tax Act, 1961

(the Act), at the instance of the Commissioner of Income-tax:

> "Whether the Appellate Tribunal is right in law and on facts in directing the ITO to treat the assessee company as an industrial company ?"

2. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue. Though served, there is no appearance on behalf of the assessee.

3. The Assessment Year is 1983-84 and the relevant accounting period of the year ended on 31st March, 1983.

4. As can be seen from the facts on record both the Commissioner (Appeals) and the Tribunal have decided the matter in favour of the assessee by relying upon their respective orders for Assessment Year 1982-83 in assessee's own case without assigning any independent reasons. Mr.Bhatt is not in a position to throw any light as to whether the decision in case of the

assessee for Assessment Year 1982-83 was carried further, and if yes, the outcome of the same.

5. Though Mr.Bhatt invited attention to the grounds of appeal filed before the CIT (Appeals) to submit that the assessee had relied upon decision in case of Commissioner of Income-tax, Orissa Vs. N.C. Budharaja and Company, [1980] 121 ITR 213 (Orissa) it is necessary to note that the definition of 'industrial company' is provided in the Finance Act and for that purpose it is necessary to ascertain the actual activity carried on by the assessee during the year under consideration and the extent of the profits from such activity. In the assessment order, it is recorded that the assessee had carried out work for Gujarat Mineral Development Corporation for removal of overburden and excavation was done.

6. In light of the aforesaid fact situation, firstly, as the outcome of Assessment Year 1982-83 is not known and secondly, the facts relating

to the activity carried out during the year under consideration are also not available in entirety, the reference is left unanswered. The Tribunal shall take into consideration the position for Assessment Year 1982-83 as well as the relevant facts while finalizing the appeal under Section 260(1) of the Act.

7. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**